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VLADIMIR ZEMLYAKOV
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JUL 11 2006

OFFICE OF PETITIONS

In re Application of :
Zemlyakov et al. :
Application No. 10/017,280 : **ON PETITION**
Filed: 7 December, 2001 :
For: UPPER EXTREMITY :
EXOSKELETON STRUCTURE AND :
METHOD :

This is a decision in reference to the paper filed on 25 May, 2006, which is treated as a renewed petition to withdraw the holding of abandonment.

This application became abandoned on 7 November, 2003, for failure to timely file corrected drawings as required by the Notice of Allowability mailed on 6 August, 2003, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 3 June, 2004. The petition to withdraw the holding of abandonment filed on 21 June, 2004, was dismissed on 30 March, 2006..

Petitioners state, in the renewed petition

1. The Office of Petitions letter informs Applicants that the Petition is dismissed because Applicants did not file a response to the Interview Summary with Notice of Allowability, and therefore, Applicants failed to file a timely reply as required. As well, the Office of Petitions Letter asserts "Petitioners should have filed a separate reply to the Notice of Allowability". Further, the Letter cites the statement from the Interview Summary, "THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW."

But the Interview Summary is formalized statement of the Interview, and the Notice of Allowability is formalized conclusions of the Interview. So the Interview is primary.

2. Applicant had the Telephone Interview with Examiner on August 5, 2003. Examiner and Applicants discussed requirements and details comprising in the non-final Office action mailed on July 16, 2003, and an agreement was reached. According to statement above, Applicants had a choice to either send formal response just after the Interview date, or wait for receiving of this Interview Summary that was later. Applicants' reply including the substance of the interview was sent on August 7, 2003 immediately after Interview date prior to the Interview Summary with the Notice of Allowability. The Interview Summary was mailed by the Office on August 6, 2003 and received by Applicants several days later. Therefore, Applicants could not wait for receiving of this Interview Summary and reply to the Notice of Allowability separately. So, Applicants respectfully assert that the formal reply, including the correct drawings, was sent timely.

Petitioners' argument has been carefully considered, but is not persuasive. As stated in the decision mailed on 30 March, 2006, the Interview Summary mailed with the Notice of Allowability states that a response to the Interview Summary is required to be filed within one month of the date of the interview or the mailing of the Interview Summary, whichever is later. Petitioner concededly failed to respond to the Interview Summary. Petitioners' argument in paragraph 1, above, is, in essence, that nothing was required to be filed in response to the Interview Summary because a response had already been filed in response to the Office action mailed on 16 July, 2003. This argument lacks merit, however, because the Interview Summary clearly stated that a reply thereto was required to be filed, regardless of whether applicants believed that all of the examiner's requirements had already been fulfilled.

Further, with regard to paragraph 2, there is no showing in the written record that the examiner agreed that no reply to the Examiner's Interview was required. As MPEP 711.03(c) states, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the

USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985). Additionally, a review of the paper filed with a certificate of mailing date of 7 August, 2003, reveals that the paper does not indicate that it was filed in response to the Interview of 5 August, 2003, but rather in response to the Office action mailed on 16 July, 2003. As such, petitioner cannot plausibly claim, at this late date, that the paper with a certificate of mailing dated 7 August, 2003, was filed in response to both the non-final Office action mailed on 16 July, 2003, and the Examiner's interview held on 5 August, 2003. It is further noted that petitioners' assertion that "[a]pplicants could not wait for receiving of the Interview Summary and reply to the Notice of Allowability separately" is unsupported because the Interview Summary was mailed with the Notice of Allowability, and a reply to each could have been filed concurrently.

Lastly, assuming, *arguendo*, that the response was timely, the response was still incomplete, as drawings in compliance with 37 CFR 1.84 or 1.1.52 were never filed. As stated previously, corrected drawings are required, and the application could not have been issued as a patent using the drawings filed to date.

As such, the showing of record is that the abandonment resulted from the failure of petitioners to respond to the Notice of Allowability, rather than an error on the part of the USPTO.

As such the application is properly held abandoned.

The petition is again **DISMISSED**.

Petitioners are strongly advised to consider filing a petition to revive under 37 C.F.R. 1.137(b).

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
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Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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